

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1625 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MOHANBHAI HARIBHAI PATEL

Versus

DAKSHIN GUJARAT AHIR SAMAJ SEVA SANGH

Appearance:

1. Civil Revision Application No. 1625 of 1999
M/S.VYAS ASSOCIATES for Petitioner No. 1-3
RULE SERVED for Respondent No. 1
MR ZUBIN F BHARDA for Respondent No. 2-3
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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 23/06/2003

ORAL JUDGEMENT

1. Mohanbhai Haribhai Patel and others who are

original defendants no. 1 to 3, have filed the present civil revision application u/s 115 of the Civil Procedure Code challenging the judgment and order dated 27-9-1999 passed by the learned Civil Judge (SD), Navsari below exh. 23 in Special Civil Suit No. 31 of 1998.

2. Shri Dakshin Gujarat Ahir Samaj Seva Sangh has filed Special Civil Suit No. 31 of 1998 before the Civil Judge (SD), Navsari against Mohanbhai Haribhai Patel and others for specific performance of the contract of 14-1-1973 executed by deceased Haribhai and deceased Bhalabhai. It is also prayed that sale deed dated 9-12-1993 executed in favour of original defendant no. 3 is illegal, unauthorised, without consideration, inoperative and null and void and declaration with respect thereto. They have also claimed the amount of Rs.1,04,000/- by way of damages for the breach of contract along with interest at the rate of 18% p.a.

3. During pendency of the aforesaid special civil suit, the original defendants no. 1 to 3 preferred an application exh. 23 under Order VII Rule 11 (d) of the Civil Procedure Code inter-alia stating that legally and on the basis of the averments made in the plaint and the documents produced by the original plaintiff, are totally time barred. It was also contended that the suit was not maintainable in the eye of law and therefore the suit be dismissed.

4. Learned Civil Judge (SD), Navsari by his impugned order dated 27-9-1999 was pleased to reject the said application exh. 23. Mr. Dhaval D. Vyas, learned advocate for the petitioner has invited my attention to the copy of the application made by the defendants no. 1 to 3 as well as the provisions of Order VII Rule 11 particularly Clause (d) of Rule 11, of the Civil Procedure Code, which reads as under :

"11 Rejection of plant - The plant shall be rejected in the following cases "

(d) Where the suit appears from the statement in the plaint to be barred by any law,

Provided : that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was presented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper,

as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

5. I have gone through the copy of the plaint of the aforesaid special civil suit, copy of the application exh. 23 preferred by the original defendants no. 1 to 3 and the impugned order dated 27-9-1999 passed by the learned Civil Judge (SD), Navsari.

6. Without entering into the merits and demerits of the case, I am of the view that the learned trial Judge is required to be requested to consider and decide the application exh. 23 a fresh after taking into consideration the provisions of Order VII Rule 11 and after hearing learned advocates for the parties. Learned advocates for the parties have agreed that the parties will have right to make necessary averments and contentions available to them in this behalf.

7. Accordingly, the impugned order dated 27-9-1999 passed below the application exh. 23 in Special Civil Suit No. 31 of 1998 by the learned Civil Judge (SD), Navsari is hereby quashed and set aside. The trial Judge is required to decide the application exh. 23 a fresh after taking into considerations the averments made by the original defendants as well as the plaintiff and provisions of Order VII Rule 11 of the Civil Procedure Code and shall pass a short but speaking order in this behalf without being influenced by the observations made by this Court in this behalf as this Court has not passed the order on the merits of the case. Rule is made absolute to the aforesaid extent, with no order as to costs.

(K. M. Mehta, J.)

/JVSatwara/